

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 10-0274

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IN THE MATTER OF:

M.C.B.,

A Youth in Need of Care.

ORDER

JUN 16 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

A petition for out-of-time appeal has been filed by counsel for T.B. and L.B., who are the Respondents in a proceeding for termination of their parental rights to their son, M.C.B. Termination was ordered by the District Court and a notice of entry of judgment was filed on April 28, 2010. Thereafter, T.B. and L.B. indicated to their counsel that they wished to appeal. The motion states that counsel "erroneously believed" that the deadline for filing an appeal was 60 days after the judgment. Soon after the appeal time expired on May 28, 2010, counsel realized his error and filed this motion. The motion indicates that the parties are ready to immediately file their notice of appeal. The motion argues that the parents are constitutionally entitled to effective assistance of counsel and that denying them an appeal may well deny them that right. The affidavit filed in support of the motion indicates that the Attorney General's Office was contacted, but had not given a response by the time this motion was filed. Subsequently, the State filed an objection.

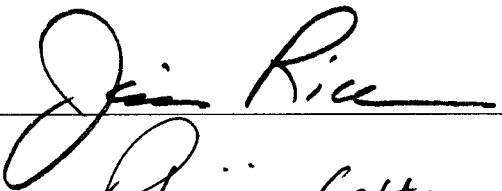

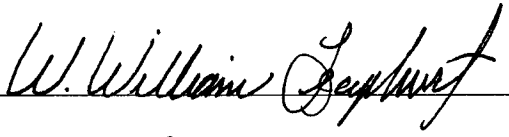
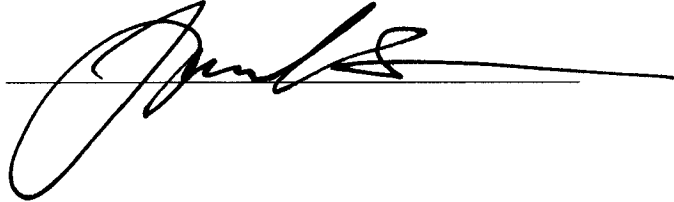
Although we deem it necessary to grant an out-of-time appeal in the interests of justice under M. R. App. P. 4(6), we admonish counsel that this rule is not meant to be a savings device for sloppy practice. The Rule states that out-of-time appeals are to be granted "in the infrequent harsh case and under extraordinary circumstances." Further requests by the Office of the State Public Defender for out-of-time appeals based upon counsel's

ignorance of M. R. App. P. 4(5)(a)(i), governing appeals involving abused and neglected children may well be viewed with disfavor.

IT IS HEREBY ORDERED that the motion for out-of-time appeal is hereby GRANTED. The parties herein shall file their notice of appeal on or before Friday, June 18, 2010.

The Clerk is directed to mail a true copy of this Order to all counsel of record.

DATED this 15<sup>th</sup> day of June, 2010.

Justices